



PREVENTIVE LAW SERIES

# AUTOMOBILE REPOSSESSION REDEMPTION RIGHTS



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## WHAT HAPPENS AFTER A VEHICLE IS REPOSSESSED IN CALIFORNIA?

The consumer has the right to reinstate the contract (i.e. to catch up on their payments) or a right to redeem the contract (i.e. pay the entire amount that is owed).

## WHAT NOTICE MUST BE GIVEN TO THE BUYER?

The Automobile Sales Finance Act provides a number of protections for repossessed vehicles. The finance company is required to send a letter to the buyer stating what it intends to do with the repossessed car. The letter must be sent to the last known address of anyone listed on the contract. Notice must be sent within 60 days of repossession AND 15 days before the car is sold if mailed or served in state, or 20 days before the car is sold if mailed or served out of state. The letter must tell the buyer how he can cure the contract (that is, make up the payments), the buyer's right to request a 10 day extension, the buyer's right to redeem by paying the full indebtedness, an itemized contract balance including any delinquency, collection or repossession costs or fees, and any credit for any unearned finance or canceled insurance. If the lender refuses to allow the buyer to reinstate the contract, then the lender must give a reason for doing so. Reinstatement rights can be denied only if: (1) the buyer intentionally provided false or misleading information of material importance on the credit application; (2) the buyer has removed the vehicle from the state or concealed it to avoid repossession; (3) the buyer has committed or threatened to commit acts of destruction or has failed to maintain the vehicle in a reasonable manner, or has failed to adequately insure the vehicle.

## REINSTATEMENT – PAYMENT REQUIRED TO ACTIVATE REINSTATEMENT RIGHTS

The buyer must reimburse the finance company for all reasonable and necessary collection and repossession costs and fees incurred, including attorney fees and legal expenses. In addition, where failure to make payments is the result of:

1. Failure to pay, buyer must make defaulted payments and any delinquency charges;
2. Failure to keep free of liens or encumbrances, buyer must satisfy encumbrances or liens and buyer must reimburse seller or holder for all reasonable costs and expenses;
3. Failure to keep insurance, buyer must obtain insurance or reimburse seller for premiums paid and all reasonable costs and expenses, including any finance charge.

## PERIOD OF TIME FOR REINSTATEMENT

To reinstate the contract and take possession of the vehicle again, the buyer has 15 days from the date that the lender gave or mailed the notice if served or mailed in state, 20 days if served or mailed out of state. This right can be extended for an additional 10 days upon the buyer's request.

## ARE THERE ANY LIMITATIONS ON MY RIGHT TO REINSTATE?

The buyer's reinstatement right may be exercised only once in a 12-month period and twice in the life of contract. Additionally, the seller may refuse the buyer's request to reinstate the contract. The seller, however, must show that the refusal was reasonable and made in good faith.

### **LIMITATIONS ON LENDER DURING THE REINSTATEMENT PERIOD**

The lender CANNOT accelerate the buyer's payments during the reinstatement period. If lender denies the right to reinstate, lender has the burden to prove that the denial was justified, reasonable, and in good faith.

### **REDEMPTION - PAYMENT REQUIRED TO ACTIVATE REDEMPTION RIGHTS**

The buyer has the absolute right to reclaim the vehicle by paying the lender all the remaining indebtedness of vehicle, including any delinquency, repossession, or collection costs and fees.

### **PERIOD OF TIME FOR REDEMPTION**

To redeem the vehicle, the buyer has 15 days from the date that the lender gave or mailed the notice if served or mailed in state, 20 days if served or mailed out of state. This right can be extended for an additional 10 days upon the buyer's request. In its notice to the buyer, the lender must provide a proper form for applying for the extension along with instructions.

### **REPOSSESSIONS AND THE SOLDIER'S AND SERVICEMEMBERS' CIVIL RELIEF ACT**

The Servicemembers Civil Relief Act (SCRA) prohibits creditors from repossessing a car if the debt arose BEFORE the debtor entered military service. The creditor is limited to a judicial action to recover the car. The court can allow repossession to take place or instead can stay the proceedings or grant other equitable relief, so long as the debtor's military service affects the debtor's ability to repay the debt. Creditors that repossess in violation of the SCRA are guilty of a misdemeanor and may be fined or imprisoned up to one year. Dependents MAY be entitled to these benefits as well.

### **PLEASE REFER TO THE "AUTOMOBILE REPOSSESSION" HANDOUT FOR MORE INFORMATION ON WHAT MAY HAPPEN AFTER YOUR AUTOMOBILE HAS BEEN REPOSSESSED.**

### **LEGAL ASSISTANCE SERVICES**

A legal assistance attorney is available by appointment Monday through Thursday from 0800 - 1100 and 1300 - 1500, and Friday from 0900 - 1045. Powers of attorney and notaries are available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island – Coronado, Building 318 – Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

### **RESOURCES**

**Federal Trade Commission:** (877) FTC-HELP; [www.consumer.ftc.gov/features/feature-0009-military-families](http://www.consumer.ftc.gov/features/feature-0009-military-families)

- Consumer Information: [www.consumer.ftc.gov](http://www.consumer.ftc.gov); (877) FTC-HELP
- File a Consumer Complaint: [www.ftccomplaintassistant.gov](http://www.ftccomplaintassistant.gov)

**California Department of Consumer Affairs:** (800) 952-5210; [www.dca.ca.gov](http://www.dca.ca.gov)

**California Department of Motor Vehicles:** (800) 777-0133; [www.dmv.ca.gov](http://www.dmv.ca.gov)

**Better Business Bureau San Diego Field Office:** (858) 496-213; [www.sandiego.bbb.org](http://www.sandiego.bbb.org)

**National Automobile Dealers Association:** [www.nada.org](http://www.nada.org)

Automobile Sales Finance Act, Cal. Civil Code §§ 2981-2984.4 (2013)

Servicemembers Civil Relief Act, 50 App'x U.S.C. §§ 501 et seq. (2012)